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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, C.J.
HON'BLE SHRI D.R. DESHMUKH, J.

WRIT PETITION NO. 3541 OF 1999

PETITIONERS

1. The State of Chhattisgarh,
Through Secretary,
Deptt. Of Forest,
D.K.S. Building, Mantralaya,
Raipur.
2. The Conservator of Forest,
Durg Circle, Durg (M.P.)
3. The Divisional Forest Officer,
Production Division, Khairagarh (M.P.)

versus

RESPONDENTS

1. Ramesh Kumar Janbandhu son of Shri Sakharam Janbandhu aged about 51 years, Ex-Forest Guard, Production Division Khairagarh R/o Village Baigatola Post Etara (Tah. Khairagarh) Distt. Rajnandgaon (MP)
2. The State Administrative Tribunal, at Jabalpur
Through : its Registrar

Present : Mr. Vinay Harit, learned Dy. A.G. for the petitioners/ State.
Mr. Vinay Pandey, learned counsel for respondent No.1.

ORAL ORDER
(Passed on 12th April, 2006)

The following oral order of the Court was passed by

S.R. NAYAK, CJ.

This writ petition arises out of disciplinary action taken by the State Government against the 1st respondent-delinquent. The 1st respondent while serving as Forest Guard In charge of Bamboo Coupe 'A' Karela in Khairagarh Production Range was issued with a charge memo dated 24.02.1987 alleging that on 20.01.1987 he had removed 1685 numbers of commercial bamboos in Truck No. MPT 9263 from stack No.77 dishonestly and committed theft thereof; these bamboos were seized on

the same day by In charge Forest Beat Guard Shri Kamal Narayan vide POR No. 4107/05 and thus, he committed a serious misconduct by committing theft of Government property. The 1st respondent was placed under suspension on 20.01.1987 in contemplation of the departmental enquiry. Along with the charge memo, the 1st respondent was served with the statement of imputations, list of documents and list of witnesses. The 1st respondents submitted his statement of defence to the charge memo. The defence taken by the 1st respondent is that there was a long-standing practice prevalent as per which although transportation of bamboos was done by hiring trucks, yet, challans were issued by the Forest Authorities concerned showing that the transportation would be done by bullock carts. However, no carting challan was produced by the 1st respondent when seizure of the bamboos was effected.

(2) The Disciplinary Authority not being satisfied with the above explanation of the 1st respondent-delinquent decided to conduct a regular departmental enquiry by appointing Shri P.P. Gosai, Assistance Conservator of Forest. The enquiry officer having conducted a regular departmental enquiry returned his finding holding that the 1st respondent-delinquent is guilty of misconduct alleged against him. On receipt of the above finding, the Disciplinary Authority having applied its mind and taken into account the nature of the misconduct committed by the 1st respondent, thought it appropriate to dismiss him from service as a disciplinary measure. Accordingly, the Disciplinary Authority passed the order (Annexure A-3 dated 22.06.1990), dismissing the 1st respondent from service. Being aggrieved by the above order of the Disciplinary Authority , the 1st respondent preferred departmental appeal to the Conservator of Forest, Durg Circle, Durg. The Appellate Authority without

finding any merit in the Appeal dismissed the appeal on 22.02.1992 (Annexure A-1). Being aggrieved by the above orders, the 1st respondent instituted Original Application No.1129/1992 before the Madhya Pradesh State Administrative Tribunal (for short 'the Tribunal') at Jabalpur.

(3) The Tribunal having opined that the Disciplinary Authority is influenced by certain observations made by the learned Sessions Judge in his judgment dated 01.11.1988 in the confiscation proceedings initiated against the owner of the truck involved in the transportation of the bamboos in decision-making; that from the statement of labourers who used to load the bamboos on trucks, it could be seen that there was a normal practice of transporting bamboos by hiring trucks though challans were issued for transporting bamboos in bullock carts and that the bamboos transported by the 1st responded were not found at the place where they were used to be kept, allowed the Original Application by its order dated 27.03.1999 and quashed the order of the Disciplinary Authority as well as that of the Appellate Authority and directed the petitioners herein to reinstate the 1st respondent into service. As regards payment of back wages, the Tribunal directed the petitioners to take a decision as per Fundamental Rule 54 read with Fundamental Rule 54-A.

(4) We have heard the learned counsel for the parties, perused the impugned order of the Tribunal, the orders made by the Disciplinary Authority and the Appellate Authority and other material papers appended to the writ petition.

(5) It was contended on the behalf of the petitioners/State that the reason assigned by the Tribunal to allow the original applications are not germane to the decision-making; that the Tribunal has failed to

appreciate that the charge leveled against the 1st respondent-delinquent was satisfactorily established by the petitioners by adducing substantive legal evidence; that the defence put forth by the 1st respondent-delinquent is not tenable; that the Tribunal has exceeded its jurisdiction in re-appreciating the evidence on record as if it is an Appellate Court forgetting the well established principle that the judicial review is against decision-making process and not against a decision itself. Learned counsel appearing on behalf of the 1st respondent , *per contra,* while supporting the impugned order of the Tribunal and assailing the validity of the order made by the Disciplinary Authority and that of the Appellate Authority would strenuously contend that the 1st respondent is a grass-root level official of the Forest Department and what he did has had oral approval of his immediate officer superior and in fact, transporting bamboos by hiring trucks was usual practice though challans were issued to transport bamboos by bullock cart, and that the Tribunal did not take that fact into consideration in the decision-making. It was also contended by the learned counsel for the 1st respondent-delinquent that the Disciplinary Authority was very much influenced by the adverse observations made by the Learned Sessions Judge in his order dated 1.11.1998 in confiscation proceedings, and that that material was used by the Disciplinary Authority against the delinquent without giving him any opportunity to have his say in the matter, thereby violating the principles of natural justice.

(6) Having heard learned counsel for the parties, a short question that arises for decision is whether the 1st respondent-delinquent has made out any ground before the Tribunal warranting interference of

the Tribunal with the disciplinary action taken by the department against the 1st respondent-delinquent.

(7) The scope of judicial review of disciplinary proceedings under Article 226 of the Constitution of India is very much circumscribed and limited by virtue of a catena of decisions of the Apex Court and High Courts. In **High Court of Judicature at Bombay Vs. Shashikant S. Patil**[1], the Apex Court held :

> ".....Interference with the decision of departmental authorities can be permitted while exercising jurisdiction under article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode for such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority on the very face of it is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case, the Disciplinary Committee of the High Court) is the sole Judge of the facts if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, its adequacy or even reliability of the evidence is not a matter of canvassing before the High Court in a writ petition under Article 226 of the Constitution".

(8) In **Indian Oil Corporation Limited v. Ashok Kumar Arora**[2], the Apex Court held:

"At the outset it needs to be mentioned that the High Court in

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1. (2000) 1 SCC 416
2. 1997 (2) Supreme 248

such cases of departmental enquiries and the findings recorded therein does not exercise powers of appellate Court/authority. The jurisdiction of the High Court in such cases is very limited, for instance, where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; justice, denial of reasonable opportunity; findings are based on no evidence and/or the punishment is totally disproportionate to the proved misconduct of an employee....."

(9) In **Rae Bareli Kshetriya Gramin Bank v. Bhola Nath Singh**[3] the Supreme Court held;

"..... Judicial review is not akin to adjudication of the case on merits as an appellate authority. The High Court, in the proceedings under Article 226 of the Constitution, does not act as an appellate authority but exercise within the limits of judicial review to correct the errors of law or procedural errors leading to manifest injustice or violation of the principles of natural justice.... The High Court examined the evidence as if it is a Court of first appeal and reversed the finding of fact recorded by the Enquiry Officer and accepted by the disciplinary authority. In these circumstances, the question of examining the evidence as was done by the High Court as Appellate Court, is wholly illegal and cannot be sustained".

(10) In **State of U.P. and others v. Nand Kishore Shukla**[4] the Apex Court held-

".....It is settled that the Court is not a Court of appeal to go into the question of imposition of punishment. It is for the disciplinary authority to consider what would be

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3. 1997 (3) Supreme 480
4. (1996) 3 SCC 750

> the nature of the punishment to be imposed on the Government servant based upon the proved misconduct against the Government servant. Its proportionality also cannot be gone into by the Court. The only question is whether the disciplinary authority would have passed such an order. It is settled law that even one of the charges if held proved is sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the court would be loath to interfere with that part of the order.....

(11) This Court in **B. Anand Mohan v. Government of India**[5] held:

> ".....The High Court in cases of departmental enquiries and findings recorded therein does not exercise the powers of the Appellate Court and the jurisdiction of the High Court is very restricted and limited and it is only in exceptional cases that such jurisdiction has to be exercised, to wit, when it is found that the domestic enquiry stands vitiated because of non-observance of principles of natural justice or denial of reasonable opportunity or that the findings are based on no evidence or the punishment imposed is totally disproportionate to the proven misconduct of an employee....."

(12) In the premise of the above-noted well-settled principles governing judicial review of disciplinary proceedings, let us proceed to examine the factual position in this case. The charge leveled against the 1st respondent-delinquent is that on 20.01.1987 he had removed 1685 numbers of commercial bamboos in Truck No. MPT 9263 from stack No.77 dishonestly and committed theft thereof. These bamboos were seized on the same day by In charge Forest Beat Guard Shri Kamal

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5. 1998 (3) ALD 231 (DB)

Narayan vide POR No. 4107/05. Having framed the above charge against the 1st respondent, it is true, it was the burden of the Disciplinary Authority to prove that charge. Therefore, the first question to be considered is whether the above charge was proved by the Disciplinary Authority by adducing evidence. The Beat Guard who seized the bamboos was examined as a witness in support of the charge by the Disciplinary Authority, and he, in his evidence, has categorically stated that the 1st respondent was transporting bamboos in the Truck illegally and without the authority of the department and without obtaining the Challan. The defence put forth by the delinquent is that as per the then prevailing practice, though challans were issued to transport bamboos by hiring bullock carts, actually bamboos were used to be transported by hiring trucks. This plea of the 1st respondent-delinquent remained as a plea only without substantiating the same by any evidence. Alternatively, it needs to be noticed that even assuming that such illegal practice was resorted to in some cases, that itself would not be a valid ground for the 1st respondent to violate the statutory rule which undeniably required the 1st respondent to obtain transit permit from the prescribed authority to remove the bamboos specifying the quantum/numbers of bamboos and destination of removal. When the Bamboos were seized, the delinquent was accompanying the bamboos and when he was questioned about his authority to transport bamboos by hiring truck, he was not in a position to produce any document in support of his action. Therefore, the charge framed against the 1st respondent-delinquent is satisfactorily proved by the department by adducing satisfactory evidence.

(13) This takes us to the contention of the learned counsel for the delinquent that the Disciplinary Authority in the decision-making was

influenced heavily on certain observations made by the learned Sessions Judge in confiscation proceedings initiated by the Authorized Officer against the owner of the truck involved in the transportation of the bamboos. It is true that the Disciplinary Authority has referred to certain adverse observations of the learned Sessions Judge made against the delinquent. It is well settled that a disciplinary action should be based on objective considerations and not on subjective satisfaction of the Disciplinary Authority. It is also well-known and settled principle of law that if an authority which is required to pass an order on objective facts/ considerations or in other words on the basis of objective satisfaction and the Reviewing Court finds that the order made by such authority is based on relevant as well as irrelevant considerations, the Reviewing Court could see whether such decision of such authority could be sustained on the basis of relevant considerations eschewing irrelevant considerations. This principle is rested on the other well recognized principle that the Court under Article 226 of the Constitution while reviewing disciplinary action cannot go into sufficiency and adequacy of the evidence on the basis of which factual findings are recorded by the Disciplinary Authority. We are of the considered opinion that, even completely eschewing the observations of the learned Sessions Judge from decision-making, the charge framed against the 1st respondent is satisfactorily proved by the Disciplinary Authority by adducing clinching evidence, if we may say so. Therefore, simply because, the Disciplinary Authority has referred to the observations made by the learned Sessions Judge, that circumstance could not have been a good and valid ground for the Tribunal to step in and interfere with the disciplinary action taken by the Disciplinary Authority.

(14) We are satisfied that the punishment imposed on the first respondent is reasonable and proportionate to the gravity of misconduct conducted by him, and it does not warrant our interference. It needs to be noticed that the theft or misappropriation even of a small amount or property of the employer may have to be viewed seriously. Nay, in a case of this nature if the employer takes a strict view, the same cannot be termed to be so irrational so as to attract the principles of Wednesbury unreasonableness. In **Om Kumar and others v. Union of India**[6] the Apex Court upon taking into consideration its earlier decision in **Union of India v. Ganayutham**[7] held that the action on the part of the State authority can be tested on the touch stone of doctrine of proportionality, but the Court will interfere therewith only in the event it is held to be so irrational or unreasonable so as to attract the principles of Wednesbury Unreasonableness of Article 14 of the Constitution of India. No ground is made out to apply that principle in this case.

(15) In **State of Tamil Nadu v. K. Guruswamy**[8] the Apex Court held that when a delinquent officer is charged with misconduct of corruption no other punishment than the dismissal is called for. In **B.C. Chaturvedi v. Union of India**[9] it was held:

> "18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline.

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6. JT 2000 (Suppl. 3) SC 92
7. JT 1997 (7) SC 572
8. (1996) 7 SCC 114
9. AIR 1996 SC 484

> They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

(16) It is, therefore, evident from the aforementioned decisions that only in exceptional and rare cases, the Court or the Tribunal would interfere with the punishment imposed by the employer and impose appropriate punishment with cogent reasons in support thereof. In the instant case, the first respondent is guilty of theft of 1685 numbers of commercial Bamboos belonging to the Forest Department. The misconduct committed by the first respondent not only very serious in nature but also touches upon moral turpitude of the delinquent. If the Courts were to interfere in such matter, the Court would be subjected to social ridicule and be accused of resting its opinion on subjective satisfaction and misplaced sympathy on a wrong person. We are satisfied that the punishment imposed on the delinquent as a disciplinary measure is propionate to the gravity of misconduct committed by him.

(17) No other contentions/grounds were urged before us by learned counsel for the parties.

(18) In the result and for the foregoing reasons, we allow the writ petition and set-aside the impugned order of the Tribunal and dismiss

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Original Application No.1129/92 filed by the 1st respondent. In the facts and circumstances of the case, we, however, direct the parties to bear their respective costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Brajesh*